IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

MONDAY, THE 26TH MARCH 2007 / 5TH CHAITHRA 1929

OP.No. 19016 of 2002(L)

PETITIONER:

T.K.CHINNAN, THONIPARAMBIL HOUSE,
MANKURISSI P.O., PALAKKAD.

BY ADV. SRI.KRB.KAIMAL

RESPONDENTS:

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1. THE DISTRICT COLLECTOR, PALAKKAD.

2. THE SUB DIVISIONAL MAGISTRATE,PALAKKAD.

3. THE EXECUTIVE ENGINEER,IRRIGATION
DIVISION, MALAMPUZHA DAM,PALAKKAD.

4. SRI.VENUGOPALAN, S/O.MADHAVAN,
VALLOORTHODI HOUSE, MANKURISSI,PALAKKAD.

ADDL.R-5. THE SUPERINTENDENT OF POLICE,
PALAKKAD.

Addl.R5 is impleaded as per order dated 4.8.2004 in I.A.No.10146 of 2004.

BY GOVERNMENT PLEADER SRI.P.K.RAVIKRISHNAN
SRI.P.CHADRASEKHAR
SRI.S.SHANAVAS KHAN
SMT.S.INDU
SRI.ANTONY V. PAUL
SRI.P.N.KRISHNANKUTTY ACHAN(SR.)
SRI.K.MOHANAKANNAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD

ON 26/03/2007, THE COURT ON THE SAME DAY DELIVERED THE

FOLLOWING:

APPENDIX (OP NO.19016 OF 2002)

PETITIONER'S EXHIBITS:

Ext.P1: Copy of the order dtd.29.5.2002 in M.C.No.69/96 issued by R2.

Ext.P2: Copy of the order dtd.11.6.2002 of the Sessions Court,Palakkad in Crl.M.P.No.1086/02 in Crl.R.P.No.53/02.

Ext.P3: Copy of the judgment dtd.4.4.2002 of this Court in O.P.No.9107 of 2002.

Ext.P4: Copy of the order dtd.15.5.2002 issued by R1.

Ext.P5: Copy of the complaint dtd.6.8.2004 submitted by the petitioner before the Superintendent of Police, Palakkad.

Ext.P6: Copy of affidavit dtd.11.12.2004 sworn to by Sri.T.V.Vasu.

Ext.P7: Copy of the sequence of events of the case.

Ext.P8: Copy of the order dtd.6.1.2005 in M.C.No.135/04 of the Sub Divisional Magistrate, Palakkad.

Ext.P9: Copy of the order dtd.6.1.2005.

Ext.P10: Copy of order dtd.3.2.05 in Crl.M.C.174/05.

Ext.P11: Copy of the report dtd.7.3.05 of the Principal Agrl.Officer, Palakkad.

Ext.P12: Copy of the final order dtd.24.5.05 in Crl.M.C.174/05.

Ext.P13: Copy of the petition dtd.25.1.06 filed by the petitioner before the Sub Divisional Magistrate, Palakkad.

Ext.P14: Copy of the report dtd.24.3.2006 of the Tahsildar, Palakkad filed before the Sub Divisional Magistrate, Palakkad.

Respondents' Exhibits:

Ext.R2(a): Copy of the sketch of the site prepared by the Revenue Officers dtd.29.9.2002.

Ext.R4(a): Copy of the written statement in OS 978/99 dtd.20.7.2000.

Ext.R4(a): Copy of the order passed by the Sub Divisional Magistrate, Palakkad in M.C.No.135/04 dtd.6.1.05.

Ext.R4(b): Copy of the order passed by the Sub Divisional Magistrate, Palakkad.

Ext.R4(c): Copy of the report filed by the Sub Divisional Magistrate, Palakkad.

Ext.R4(d): Copy of the notice issued by the Sub Divisional Magistrate to the petitioner as well as respondents.

-True Copy-

P.A.to Judge.

S. SIRI JAGAN, J.

O.P.NO. 19016 OF 2002

Dated this the 26th day of March, 2007

J U D G M E N T

In this Original Petition, the petitioner seeks implementation of Ext.P4 order passed by the District Collector. The operative portion of Ext.P4 reads thus:-

> "In the circumstances, Criminal Prosecution is ordered to be initiated against Shri.Venugopal U/S.5 (1)(iii) of the 1947 Act read with Section 430 of the I.P.C. The Executive Engineer, Irrigation Division, Malampuzha is directed to lodge the complaint with the Superintendent of Police, Palakkad as the petitioner has alleged that the Sub Inspector of Police, Mankara is adopting a lukewarm attitude in this case. The complaint will be lodged within 7 days of receipt of this order.
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> In addition to the Criminal prosecution, the Revenue Divisional Officer, Palakkad is directed with the help of Executive Engineer, Irrigation and local Police to open up the said Chal within 15 days of the date of receipt of this order."

2. Of course, regarding the criminal prosecution, it is for the authority to take appropriate proceedings. The

petitioner is, for the present, concerned with the other direction by which the Revenue Divisional Officer, Palakkad was directed to open up the water chal in question within 15 days of the date of receipt of the order with the help of the Executive Engineer, Irrigation and the local Police.

3. A counter affidavit has been filed by the second respondent in para 5 of which it has been stated thus:-

> "On 24.9.2002, specific directions were issued to the Tahsildar, Palakkad to clear all obstructions, to ensure full compliance of the order of this Honourable Court. A copy of the communication was also sent to the 4th respondent herein. On 28.09.2002, at about 8.00 am, the clearing work was started with the assistance of eight workers with their earth removing tools. The Sub Inspector of Police, Mankara was in the spot with about 20 Police Constable including Women Police Constables. The Assistant Executive Engineer and Assistant Engineer of the Irrigation Department, along with the Village Officer, Mankara was also present. The work continued till 6.00 pm. On 29.09.2002, again the

> work started at 8.00 am and the work was completed by about 12.30 om. I am producing herewith a copy of the sketch of the site prepared by the Revenue Officers which will give a clear lay out and idea of the Kada Canal and the compliance work done by us, a true copy of which is produced herewith and marked for reference as Ext.R2(A). It is submitted that to ensure free flow of water through the public chal, clearing work have to be done in the properties belonging to some private parties and also the public pathway."

That was in October 2002. The petitioner again approached this Court with I.A.No.12996 of 2006 stating that in spite of several orders of this Court, the water chanal still remains clogged and therefore this Court may issue a commission to ascertain the facts. Therefore, I had issued a commission and directed an Advocate Commissioner appointed in that I.A. to inspect the properties and to report as to whether there is any obstruction to the water chal. The Commissioner has filed a report dated 18.10.2006 along with the sketch of the properties in question in which the Commissioner

reported that certain portions of the water chal is filled up and the chal is thus clogged. On the basis of this report, the petitioner now seeks a direction to the Revenue Divisional Officer to comply with the last direction in Ext.P4 in letter and spirit.

4. Learned counsel for the fourth respondent submits that the petitioner is abusing the process of this Court by asking this Court to conduct a parallel proceedings when admittedly proceedings as directed by Exts.P10 and P12 are still pending.

5. I have heard both sides in detail.

6. I am of the opinion that notwithstanding any other proceedings pending, in so far as Ext.P4 has become final, there is a duty on the Revenue Divisional Officer to see that the direction in Ext.P4 is complied with. Whatever be the other proceedings that are pending, it cannot go counter to the direction in Ext.P4 because neither the fourth respondent nor anybody else has challenged Ext.P4. Therefore, there cannot be any

doubt that the Revenue Divisional Officer has to see that the direction of the District Collector in Ext.P4 as quoted above, is complied with in letter and spirit. As evidenced by the Commission Report to which neither the fourth respondent nor anybody else has filed any objections, it is clear that there is obstruction to the water chal. Necessarily, the obstruction has to be removed. If, apart from the obstruction noted by the Advocate Commissioner, there are other obstructions also still subsisting, that also have to be removed peremptorily.

7. Accordingly, I direct the second respondent who is the Revenue Divisional Officer also to see that the water chal in question is kept open always and to take appropriate action to clear the water chal whenever there is obstruction as directed in Ext.P4. It would be open to the petitioner to bring to the attention of the second respondent any obstruction noted by him to the water chal and the Revenue Divisional Officer shall immediately see that the said obstruction to the water chal is

removed peremptorily.

The Original Petition is disposed of with the above direction.

S. SIRI JAGAN,
Judge

Mbs/

S.SIRI JAGAN, J

O.P. NO.19016 OF 2002

J U D G M E N T

DATED:26-03-2007